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Special Counsel for Official Committee of Tort Claimants

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re:

PG&E CORPORATION

-and-

**PACIFIC GAS AND ELECTRIC
COMPANY,**

Debtors.

- ☐ Affects PG& E Corporation
- ☐ Affects Pacific Gas and Electric Company
- ☒ Affects both Debtors

**All papers shall be filed in the Lead Case,
No. 19-30088 (DM)*

Bankruptcy Case
No. 19-30088 (DM)

Chapter 11
(Lead Case)
(Jointly Administered)

**EX PARTE APPLICATION OF THE
OFFICIAL COMMITTEE OF TORT
CLAIMANTS PURSUANT TO
FEDERAL RULE OF BANKRUPTCY
PROCEDURE 2004 FOR ENTRY OF AN
ORDER AUTHORIZING SERVICE OF
A SUBPOENA ON KPMG LLP**

[No Hearing Required Per L.B.R. 2004-1(a)]

1
2 The Official Committee of Tort Claimants (the “**TCC**”), by and through its undersigned
3 counsel, hereby submits this Ex Parte Application Pursuant to Federal Rule of Bankruptcy
4 Procedure 2004 and Local Bankruptcy Rule 2004-1(a) for Entry of an Order Authorizing the
5 Service of a Subpoena (the “**Application**”) on KPMG LLP (“**KPMG**”), who is one of the third-
6 party contractors, vendors, suppliers and/or consultants (collectively, the “**PG&E Contractors**”)
7 who provided services to PG&E Corporation and Pacific Gas and Electric Company (collectively,
8 the “**Debtors**”), requesting that this Court enter an order authorizing service of the subpoena
9 attached hereto as **Exhibit B** on KPMG as set forth below.

10 **I.**

11 **DISCUSSION**

12 Under the terms of the Restructuring Support Agreement between the Debtors, the TCC
13 and certain other parties (the “**RSA**”), and the Debtors’ proposed plan of reorganization which
14 incorporates terms required by the RSA (the “**Plan**”), the Debtors have agreed that their
15 confirmed Plan will assign to the future Fire Victim Trust:

16 any and all rights, claims, causes of action, and defenses related
17 thereto relating directly or indirectly to any of the Fires that the
18 Debtors may have against vendors, suppliers, third party
19 contractors and consultants (including those who provided services
regarding the Debtors’ electrical system, system equipment,
inspection and maintenance of the system, and vegetation
management) ...

20 See RSA, Dkt. No. 5038-1, page 42 (the “**Assigned Claims**”).

21 At the hearing held in this Court on December 17, 2019 at which the RSA was approved
22 by this Court, counsel for the Official Committee of Unsecured Creditors (“**UCC**”) raised a
23 prospective objection to confirmation of the Debtors’ proposed Plan on feasibility grounds, on the
24 theory that the Debtors will be unable to obtain the PG&E Contractors’ services that they require
25 in order to comply with AB 1054 if the Fire Victim Trust receives an assignment of the Assigned
26 Claims, because PG&E Contractors will be unable to obtain insurance to cover their services. As
27 a result of this potential Plan objection, the documents that are requested by the attached
28 subpoena are all directly relevant and integral to the Plan confirmation process. In particular,

1 given the Debtors' practice of requiring that it be named as an "additional insured" in the
2 insurance policies of its PG&E Contractors, all requested insurance policies and correspondence
3 related thereto are relevant and not subject to any privilege or confidentiality protection. Indeed,
4 the estate has a property interest in its right to direct coverage under such policies. Similarly,
5 requested contracts and related information pertaining to the scope of each contractors' work,
6 indemnification obligations, and the nature of the work that would need to be replaced by the
7 Debtors if such contractor were unable to obtain insurance because of the Assigned Claims, are
8 all directly relevant to the Plan confirmation proceedings.

9 The TCC also seeks the requested documents for the purpose of determining the nature
10 and value of the Assigned Claims so that the TCC may address any objections at Plan
11 confirmation that pertain such matters, and to permit the TCC to assist the future Fire Victim
12 Trust to understand the nature of actions that may be subject to statutes of limitations that could
13 expire shortly after the Plan's Effective Date. Such information is necessary to ensure that the
14 prospective value of the Assigned Claims is not lost, whether due to a Plan objection that opposes
15 the assignment, or due to expiration of a statute of limitations.

16 This Motion represents a procedural correction. The TCC previously issued 107
17 subpoenas to obtain the same information, on the belief that a contested matter pertaining to Plan
18 confirmation had been created by the UCC's announced Plan objection. Prior to the Court's
19 instruction that Rule 2004 is the proper procedure by which the TCC may obtain such
20 information, the TCC had already withdrawn approximately one quarter of its subpoenas, or had
21 received documents from approximately one quarter of the recipients.

22 Rule 2004 permits any party in interest to take an examination of "any entity" with respect
23 to "the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to
24 any matter which may affect the administration of the debtor's estate ..." and obtain documents.
25 Fed. R. Bankr. P. 2004(a) and (b). At this time, the TCC only seeks to obtain documents, and
26 does not intend to take an in-person examination of any party. *In re Verity Health Sys. of*
27 *California*, 2019 Bankr. LEXIS 2055 *35 (Bankr. C.D. Cal. May 24, 2019) ("Rule 2004 contains
28 a mechanism for compelling the production of documents"). If the TCC concludes that it requires

1 an in-person examination, it will file a separate motion to make such a request. There are no
2 pending adversary proceedings in which this same discovery could be taken at this time, and
3 therefore the relief accorded by Rule 2004 remains the relevant means for the TCC to obtain this
4 necessary information for the plan solicitation/confirmation process, and to permit a seamless
5 transition for the Fire Victim Trust.

6 The TCC has been attempting for nearly a year to obtain as much information about these
7 matters from the Debtors as can be obtained. That production has been insufficient, and cannot
8 fully address the issues that may arise at plan confirmation, as each Contractor is likely to be the
9 only party that has all of the insurance contracts, insurance correspondence, claims demands, and
10 other such information that will be relevant to a Plan objection.

11 The documents that the TCC seeks from each of the PG&E Contractors are limited in
12 scope, and fall into the following general categories:

- 13 1. Contracts, and authorizations for work under such Contracts, with either or both of the
14 Debtors, or any intermediate contractor;
- 15 2. Documents that constitute or contain reports, analyses, summaries, or descriptions of
16 the work performed by the Contractor for either or both of the Debtors;
- 17 3. Indemnification/hold harmless agreements related to services provided to either or
18 both of the Debtors;
- 19 4. Insurance Policies and related documents and communications that cover claims by
20 either or both of the Debtors arising out of such PG&E Contractors' services; and
- 21 5. Documents pertaining to any payments or obligations arising under the insurance
22 policies sought in the subpoena.

23 As this list demonstrates, this Motion seeks a limited scope of discovery relating to the
24 Assigned Claims and the UCC's proposed Plan objection.

25 **TIME AND PLACE FOR PRODUCTION**

26 The requested date of the document production is twenty-one (21) days from entry of an
27 order granting the Application. This provides a reasonable time for production after the
28 anticipated date of entry of such order.

1 Service of the Application is effective via the Court's electronic notice.

2 **NO PRIOR REQUEST FOR RELIEF**

3 No previous application for the relief sought herein has been made to this Court under
4 F.R.B.P. 2004.

5 **CONCLUSION**

6 Accordingly, this Application is properly made on an ex parte basis under Local Rule
7 2004-1(a) and the TCC respectfully requests this Court immediately take notice of the
8 Application and enter an order in substantially the form attached hereto as **Exhibit A**, granting
9 the relief requested herein, and such other and further relief as may be just.

10
11 Dated: April 30, 2020

Respectfully submitted,

12 MacConaghy & Barnier, PLC

13
14 /s/ John H. MacConaghy

15 By: _____
16 John H. MacConaghy
17 *Special Counsel for The Official Committee*
18 *of Tort Claimants*

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EXHIBIT A

MacCONAGHY & BARNIER, PLC
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**ORDER GRANTING THE EX PARTE
APPLICATION OF THE OFFICIAL
COMMITTEE OF TORT CLAIMANTS
PURSUANT TO FEDERAL RULE OF
BANKRUPTCY PROCEDURE 2004 FOR
ENTRY OF AN ORDER AUTHORIZING
SERVICE OF A SUBPOENA ON KPMG
LLP**

1 The Court, having reviewed the Ex Parte Application of the Official Committee of Tort
2 Claimants Pursuant to Bankruptcy Rule 2004 for Entry of an Order Authorizing Service of a
3 Subpoena on KPMG LLP filed on April 30, 2020 (the "Application"), and after due deliberation
4 and sufficient cause appearing therefor,

5 IT IS HEREBY ORDERED THAT:

- 6 1. The Application is granted, as provided herein.
- 7 2. The TCC is authorized to serve the subpoena attached to the Application as
8 Exhibit B, with an amended return date of 21 days from the date of this Order.

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12 **END OF ORDER**
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EXHIBIT B